



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0077]

RIN 1625-AA00

Safety Zone; 2013 Naval Air Station Key West Air Spectacular, Boca Chica Channel; Boca Chica, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Boca Chica Channel in Boca Chica, Florida, during the 2013 Naval Air Station Key West Air Spectacular. The safety zone is necessary to provide for the safety of life on navigable waters during the air show and air show practices. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Key West or a designated representative.

DATES: This rule is effective from 12 p.m. on March 21, 2013, until 4:30 p.m. on March 24, 2013. This rule is enforced from 12 p.m. until 1 p.m., 1:30 p.m. until 2:30

p.m., and 3:30 p.m. until 5:30 p.m. on March 21, 2013, and from 2:30 p.m. until 4:30 p.m. on March 22, 23 and 24, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0077]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Marine Science Technician First Class William G. Winegar, Sector Key West Prevention Department, Coast Guard; telephone (305) 292-8809, e-mail William.G.Winegar@uscg.mil. If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive necessary information from the United States Navy about the event until February 5, 2013; The Navy is anticipating this event taking place as scheduled. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be impracticable because immediate action is needed to minimize potential danger to spectator vessels, and the general public.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register.

#### B. Basis and Purpose

On March 21 through 24, 2013, The United States Navy is hosting an air show on NAS Key West which includes a show performed by the Blue Angels. The event will be held on NAS Key West, Boca Chica, but low flight areas extend into Boca Chica Channel located west of Boca Chica, Florida. The Blue Angels will be performing aerobatic maneuvers above NAS Key West and Boca Chica Channel. Spectator vessels are anticipated to be present during the air show.

The purpose of the rule is to protect spectator vessels, and the general public from the hazards associated with low flying aircraft during the air show.

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

#### C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that encompasses certain waters of the Boca Chica Channel located west of Boca Chica, Florida. The safety zone will be enforced from 12 p.m. until 1 p.m., 1:30 p.m. until 2:30 p.m., and 3:30 p.m. until 5:30 p.m. on March 21, 2013, and 2:30 p.m. until 4:30 p.m. on March 22 through the 24, 2013. The safety zone encompasses all waters within a pre-designated box offshore of NAS Key West on Boca Chica where all persons and vessels, except those persons and vessels participating in the air show, are prohibited from entering, transiting, anchoring, or remaining. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Key West by telephone at 305-292-8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated

representatives.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) The safety zone will only be enforced for four hours on March 21, 2013 and for two hours each day thereafter; (2) vessel traffic in the area is expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Key West or a designated representative, they may operate in

the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Key West or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the safety

zone from 12 p.m. until 1 p.m., 1:30 p.m. until 2:30 p.m., and 3:30 p.m. until 5:30 p.m. on March 21, 2013, and 2:30 p.m. until 4:30 p.m. on March 22 through the 24, 2013. For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not



retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically

significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under Figure 2-1, paragraph (34)(g), of the instruction. This rule involves establishing a temporary safety zone that will be enforced for a total of four hours on March 21, 2013 and for two hours each day thereafter. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department

of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07-0956 to read as follows:

§ 165.T07-0956 Safety Zone; Naval Air Station Key West Air Spectacular, Atlantic Ocean, Boca Chica, FL.

(a) Regulated Area. All waters of the Atlantic Ocean located west of Boca Chica encompassed within an imaginary line connecting the following points: starting at Point 1 in position 24°33'48"N, 81°43'02"W; thence north to Point 2 in position 24°34'18"N, 81°43'08"W; thence east to Point 3 in position 24°34'28"N, 81°42'22"W; thence southwest following the shoreline back to origin. All persons and vessels, except those persons and vessels participating in the air show, are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone. All coordinates are North American Datum.

(b) Definition. The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Key West in the enforcement of the regulated area.

(c) Regulations.

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining

within the regulated area unless authorized by the Captain of the Port Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Key West by telephone at (305) 292-8727, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Effective Date. This rule is enforced from 12 p.m. until 1 p.m., 1:30 p.m. until 2:30 p.m., and 3:30 p.m. until 5:30 p.m. on March 21, 2013, and from 2:30 p.m. until 4:30 p.m. on March 22 through the 24, 2013.

Dated: March 4, 2013

A. S. Young Sr.  
Captain, U.S. Coast Guard  
Captain of the Port Key West

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